

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1751 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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ABDULBHAI VALIBHAI

Versus

GANPATBHAI RAMSINGBHAI VASAVA  
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Appearance:

MRS KETTY A MEHTA for Petitioners  
MR ANAND YAGNIK for MR GIRISH PATEL for  
Respondent No. 1, 2, 3, 4  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/10/2000

ORAL JUDGEMENT

The present revision application has been filed  
by the original plaintiffs of Regular Civil Suit No.45 of  
1996 which is pending before the Joint Civil Judge

(Junior Division), Mangrol. It is the case of the plaintiffs in the said suit that they are in possession of the agricultural land bearing Survey No. 36 situated in Moje Peda, Taluka Mangrol, District Surat, that they are growing crops in the said agricultural land, that originally the said land belonged to the father of the plaintiff and after the death of their father on 19.3.1994 names of the plaintiffs were mutated in the revenue record. It is their case that originally the land belonged to one Jesing Ramsing who sold it to one Ahmed Saleh Bagase on 3.2.1971 by way of registered sale deed for Rs.5999/- and mutation entry was made after the RTS proceedings. Subsequently, the aforesaid land was sold to the deceased husband of the plaintiff no.1 and father of the rest of the plaintiffs on 4.5.1978 by way of registered sale deed and revenue entries were also mutated at that time. Since then, deceased Valibhai Ismailbhai was cultivating the said land as owner and has also obtained the loan from Bank of Baroda. It is alleged in the plaint that defendant no.4 raised a dispute that the said land which originally belonged to Adivasi cannot be legally sold and accordingly the Assistant Collector of Olpad cancelled the entry by making necessary entry after conducting the inquiry through the Mamlatdar, Mangrol. It is the case of the plaintiffs that the defendants want to take away possession of the suit land and is trying to disturb their possession relying upon cancellation of the entries in revenue record which was subsequently made. It is the case of the plaintiffs that they are actually cultivating the land in question and they would face dire consequences if defendants are allowed to take away the possession. On the aforesaid grounds the plaintiffs filed the suit for a declaration and permanent injunction.

2 The defendants filed written statement at exh.13 and denied the suit on various grounds. It was stated in the written statement that the Civil Court has no jurisdiction to entertain the said as the question of tenancy was involved and the Tenancy Court was the only court which can decide the same. It was also pointed out that the sale in question was void since it is in violation of the provisions of Section 73A and 73AA of the Bombay Land Revenue Code. On this and such other grounds the suit in question was resisted by the defendants.

3 Along with the suit, the plaintiffs have filed an application below exh.5 for interim injunction. The trial Court rejected said application for interim

injunction and the said order of the trial Court was challenged by the plaintiffs by way of filing Misc. Civil Appeal No.45 of 1996 before the District Court. The learned Extra Asst. Judge, Surat, who heard the appeal ultimately dismissed the same and accordingly the order of the trial Court below exh.5 was confirmed by the appellate Court. The original plaintiffs have preferred this revision application challenging the aforesaid order of the appellate Court by invoking Section 115 of the Civil Procedure Code.

4 The aforesaid revision application has been admitted by this Court and interim relief has also been granted by this Court.

5 Today when the matter was called out for hearing, Mrs Mehta for the petitioner submitted that both the Courts have committed an error of jurisdiction in reaching to the conclusion that there is no prima facie case in favour of the plaintiffs. She submitted that so far as entry in revenue records is concerned, it is merely of presumptive value and it cannot be made any basis for deciding the question of title. She further submitted that even if the tenancy proceedings are pending so far as question of interim injunction regarding possession is concerned, the Civil Court has jurisdiction to grant the same because by granting injunction the Court is not deciding the title between the parties. She submitted that in any case since considerable time the interim injunction is in operation in favour of the plaintiffs and the suit is of 1975, it is in the interest of justice if the interim relief is ordered to continue till the suit is finally decided by the trial Court. It was further submitted by her that the provisions of Section 73-A or 73-AA of the Bombay Land Revenue Code will not be applicable as survey settlement had already taken place long before and the land in question was in erstwhile Baroda State and before the merger of Baroda State the survey settlement had taken place. To substantiate her say, she relied upon the decision reported in 1996 2 GLH 330.

6 Against the aforesaid arguments, it was pointed by Mr Anand Yagnik, learned counsel for Mr Girish Patel, that in view of the decision of this Court reported in 1973 SC P.76 revision is not maintainable as there is no jurisdictional error which can be said to have been committed by the courts below. He further submitted that to grant injunction or not is in discretion of the trial

Court and the order of the appellate Court is final and this Court can interfere only when there is jurisdictional error which can be said to have been committed by the learned appellate Judge. He further submitted that in any case when the transaction in question is void, the plaintiffs cannot get title in their favour because by such sale deed they cannot get any right, title or interest over the suit property.

7 After considering the rival submissions of both the sides, I am of the opinion that in this case the lower appellate Court has failed to exercise its jurisdiction vested in it by law. At page 14 of the said judgement it has been found by the appellate Court in para 9 that the trial Court has used the discretion in not granting the interim injunction to the plaintiffs particularly when granting of such injunction would restrain the revenue authorities from proceeding with the enquiry ordered by the Asst. Collector. The learned appellate Judge also further observed that the RTS Appeal is also pending before the Deputy Collector being Appeal No.49 of 1995. The learned appellate Judge has also observed in concluding part of para 10 of his judgement that the civil Court cannot go into the merits of the case regarding transfer of land from non-adivasi to adivasi etc. Of course, the appellate Court has also not found prima facie case in favour of the plaintiffs. Virtually therefore the appellate Court has not thought it fit to consider the question of injunction on merits on the ground that the plaintiffs can obtain such an order from the revenue authorities. However, it appears from the record that no interim order of the revenue authority is placed on record. If there is contrary interim direction given by the revenue authorities by injunction then naturally civil court cannot grant injunction which may run counter to the injunction granted by the revenue authorities. But when there is nothing on record to show that there is any injunction which has been granted by the revenue authorities simply because some RTS proceedings are pending is no ground for not granting interim injunction. So far as RTS proceedings are concerned, they are only for fiscal purpose and said proceedings cannot be said to be related with dispute in connection with title of the property. It therefore cannot be inferred that the jurisdiction of the Civil Court is ousted in view of the proceedings which might be pending before the revenue authority in connection with revenue entries. In the present suit the Court while deciding the interim application has to decide the question about the physical possession. The lower appellate Court has not considered all these

relevant facts and circumstances of the case and has failed to exercise the jurisdiction vested in it under the law. I am therefore of the opinion that this revision is required to be allowed.

8 Since the main suit is pending since 1996 and there is already interim relief in favour of the plaintiffs, the interim relief granted by this Court is required to be continued till the suit is finally disposed of. It is also just and proper to direct the Civil Court to decide the suit viz. Regular Civil Suit No.40 of 1996 after hearing all the sides latest by 30.4.2001. So far as the observations made in this revision are concerned, they are made only for the purpose of deciding the interim injunction and it will have no bearing in the suit and the suit is to be decided as per the evidence on record and in accordance with law. In the facts and circumstances of the case, the petitioners and the respondents are directed to maintain status quo till the suit is decided by the learned Civil Judge.

9 This Civil Revision Application is therefore allowed to the aforesaid extent. Rule is made absolute accordingly to the aforesaid extent with no order as to costs. Writ of this order to be sent to the trial Court forthwith.

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